

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

NOTICE OF MOTION

FAWZI A. AL-ARASHI,

1:13-cr-00076

Defendant.

SIRS:

PLEASE TAKE NOTICE, that upon the annexed Affidavit of Cheryl Meyers Buth, Esq., the defendant moves this Court for a fifth adjournment of the sentencing date currently scheduled for September 5, 2014 for the reasons set forth in the accompanying affidavit.

DATED: August 13, 2014
Orchard Park, New York

Respectfully submitted,

/s/Cheryl Meyers Buth
Cheryl Meyers Buth, Esq.
MURPHY MEYERS LLP
Attorney for Defendant
6506 East Quaker Street
Suite 200
Orchard Park, New York 14127
(716) 662-4168

cc: Frank T. Pimentel
Assistant United States Attorney
United States District Court
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716) 843-5868

Joel L. Daniels, Esq.
Attorney for Defendant
42 Delaware Avenue
Suite 700
Buffalo, New York 14202
(716) 856-5140

David Ball
U.S. Probation Officer
2 Niagara Square
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

AFFIDAVIT

FAWZI A. AL-ARASHI,

1:13-cr-00076

Defendant.

State of New York)
County of Erie) ss:
Town of Orchard Park)

CHERYL MEYERS BUTH, being duly sworn, deposes and says:

1) I am duly admitted to practice before the United States District Court for the Western District of New York, and I am a partner in the law firm Murphy Meyers LLP, with offices located at 6506 East Quaker Street, Suite 200, Orchard Park, New York 14127. I appear in this matter as co-counsel with Joel L. Daniels, Esq., on behalf of Mr. Arashi.

2) This Affidavit is submitted in support of the Defendant's fifth motion for an adjournment of sentencing. On April 21, 2014, we filed a motion to adjourn sentencing which had been re-scheduled to June 6, 2014. This Court granted the

motion and sentencing was moved to September 5, 2014. The Government's 5K1.1 motion and the parties' objections to the presentence report are due on August 15, 2014.

3) Last year, on July 24, 2013, Mr. Arashi entered a guilty plea to count 1 of the indictment charging him with a violation of 21 USC 846 (conspiracy to possess with intent to distribute a schedule I controlled substance). The case involved synthetic drugs, including, AM-2201 and others.

4) Subsequently, Mr. Arashi appeared at U.S. Probation as requested for a presentence interview.

5) We anticipate that this Court will have to determine how the controlled substances at issue in this case should be treated for Sentencing Guidelines purposes; specifically, the conversion ratio to marijuana.

6) At the time of Mr. Arashi's presentence interview, there was no similar case in the Second Circuit. Therefore, we requested additional time to provide the U.S. Probation Officer with as much material as possible to incorporate into the presentence report, including transcripts from cases outside our circuit.

7) The presentence report was prepared and sent to the parties on July 24, 2014. In the meantime, we learned of a case from the Northern District of New York where a sentencing hearing had been held regarding the same sentencing

guideline section that is at issue here. We have since obtained the transcript and we are reviewing it with our expert.

8) In addition, the presentence report contained a recommendation for an enhancement that was not contemplated by the plea agreement. We plan to file objections to the presentence report. We anticipate that a hearing will be necessary to resolve disputed facts.

9) We have been in close contact with Assistant United States Attorney Pimentel and Probation Officer David Ball on this case. Both are aware of the above-referenced issues.

10) Defendant, with the consent of the Government, is requesting that the sentencing date in this case be adjourned for an additional 90 days. We would also request that the schedule for sentencing submissions be modified accordingly.

WHEREFORE, it is respectfully requested that the sentencing date scheduled for September 5, 2014 be adjourned at least 90 days.

/s/Cheryl Meyers Buth
Cheryl Meyers Buth, Esq.
MURPHY MEYERS LLP
Attorneys for Defendant
6506 East Quaker Street
Suite 200
Orchard Park, New York 14127
(716) 662-4186

Sworn to before me this
13th day of August, 2014.

/s/Cindy M. Raab

Cindy M. Raab

Notary Public

State of New York

Qualified in Erie County

My Commission Expires May 31, 2018

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

1:13-cr-00076

FAWZI A. AL-ARASHI,

Defendant.

CERTIFICATE OF SERVICE

I, Cindy M. Raab, hereby certify that on August 13, 2014, I electronically filed the foregoing Notice of Motion with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case.

Frank T. Pimentel
Assistant United States Attorney
138 Delaware Avenue
Buffalo, New York 14202

Joel L. Daniels, Esq.
42 Delaware Avenue
Suite 700
Buffalo, New York 14202

And by United States Postal Service, postage paid, I personally mailed to:

David Ball
U.S. Probation Officer
2 Niagara Square
Buffalo, New York 14202

/s/Cindy M. Raab
Cindy M. Raab